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** LICENSED TO PRACTICE IN PENNSYLVANIA

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**PLEASE REPLY TO
ATLANTIC COUNTY OFFICE**

October 29, 2013

Via ECF Filing

United States District Court/Camden
Mitchell H. Cohen United States Court House
One John F. Gerry Plaza – Courtroom 4D
PO Box 887
Camden, New Jersey 08101

Re: Taharqu Dean v. Deptford Township /d/b/a Deptford Township Police Department; Daniel Murphy, Chief of Deptford Township Police Department; Gloucester County d/b/a Deptford Township Police Department; Gloucester County Department of Correctional Services; Eugene Caldwell, II as Warden of the Gloucester County Department of Correctional Services; Brandon Cohen, Police Officer for Deptford Township Police Department; Michael DiVito, Police Officer for Deptford Township Police Department; John Storms, Sergeant for Deptford Township Police Department; and Jesse Yamada, Sergeant for the Gloucester County Department of Correctional Services.

Civil Action Number: 13-cv-05197-RMB-KMW

Qual-Lynx File Number: X122590

Our File Number: 46640-35

Your Honor:

Page 2

October 29, 2013

Clerk

United States District Court/Camden

Re: Taharqu Dean v. Deptford Township /d/b/a Deptford Township Police Department; Daniel Murphy, Chief of Deptford Township Police Department; Gloucester County d/b/a Deptford Township Police Department; Gloucester County Department of Correctional Services; Eugene Caldwell, II as Warden of the Gloucester County Department of Correctional Services; Brandon Cohen, Police Officer for Deptford Township Police Department; Michael DiVito, Police Officer for Deptford Township Police Department; John Storms, Sergeant for Deptford Township Police Department; and Jesse Yamada, Sergeant for the Gloucester County Department of Correctional Services.

Civil Action Number: 13-cv-05197-RMB-KMW

Qual-Lynx File Number: X122590

Our File Number: 46640-35

Our firm represents Defendants, Deptford Township, Chief of Police Daniel Murphy, Michael DiVito and John Storms in the above-noted matter.

On or about October 23, 2013, Plaintiff filed a Motion to Dismiss the above Defendants' Counterclaim asserted in the Defendants' Answer to Plaintiff's Complaint. (ECF #19). On the same day, Plaintiff's Motion was administratively terminated pursuant to this Court's "Individual Rules and Procedures." (ECF #20). On or about October 25, 2013, Plaintiff submitted a letter requesting a pre-motion conference "per this Honorable Court's rules and procedures." (ECF #21).

Upon consideration, pursuant to Fed. R. Civ. Pro. 41, Defendants have decided to voluntarily dismiss their counterclaim without prejudice. Under R. 41(c), a counterclaimant may voluntarily dismiss any counterclaim:

- (1) before a responsive pleading is served; or
- (2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

In the instant case, Plaintiff has not filed a responsive pleading, as a Motion to Dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6) is not a "responsive pleading." *See, e.g., Directv, Inc. v. Cino*, 2004 U.S. Dist. LEXIS 28047 (June 10, 2004)(dismissing Plaintiff's R. 12(b)(6) Motion to Dismiss as moot and dismissing Defendants' counterclaims without prejudice pursuant to Notices of Voluntary Dismissal filed by Defendants in response to Plaintiff's Motion to Dismiss under Fed. R. Civ. Pro. 41(c)).

Page 3

October 29, 2013

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United States District Court/Camden

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Furthermore, as we are in the initial pleading stage of this lawsuit, no evidence regarding the counterclaim (or any other claim) has been introduced.

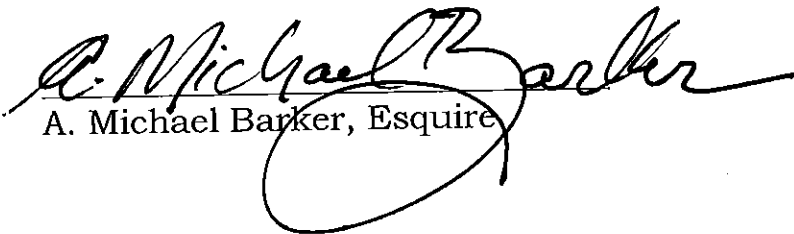
Therefore, Defendants respectfully request that this Court dismiss Defendants' counterclaim without prejudice pursuant to the Defendants' Notice of Voluntary Dismissal.

Thank you for your time and attention to this matter.

Very Truly Yours,

BARKER, GELFAND & JAMES
a Professional Corporation

By:


A. Michael Barker, Esquire

AMB/jps
Enclosure

cc: **with copy of enclosure to:**
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Patrick J. Madden, Esquire

A. Michael Barker, Esquire
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AMBarker@BarkerLawFirm.net
Our File Number: 46640-35

Attorney for Defendants, Deptford Township, Chief of Police Daniel Murphy, Michael DiVito, and John Storms jointly, severally and in the alternative.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY - CAMDEN**

TAHARQU DEAN,

PLAINTIFF,

v.

DEPTFORD TOWNSHIP D/B/A DEPTFORD
TOWNSHIP POLICE DEPARTMENT;

DANIEL MURPHY, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS CHIEF OF THE
DEPTFORD TOWNSHIP POLICE DEPARTMENT;

GLOUCESTER COUNTY D/B/A DEPTFORD
TOWNSHIP POLICE DEPARTMENT;

GLOUCESTER COUNTY DEPARTMENT
OF CORRECTIONAL SERVICES;

EUGENE CALDWELL, II, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY AS WARDEN OF
THE GLOUCESTER COUNTY DEPARTMENT OF
CORRECTIONAL SERVICES;

BRANDON COHEN, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS POLICE OFFICER
FOR THE DEPTFORD TOWNSHIP POLICE

Civil Action
Number 13-cv-05197 (RMB/KMW)

**NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE PURSUANT TO
FED. R. CIV. PRO. 41**

DEPARTMENT;

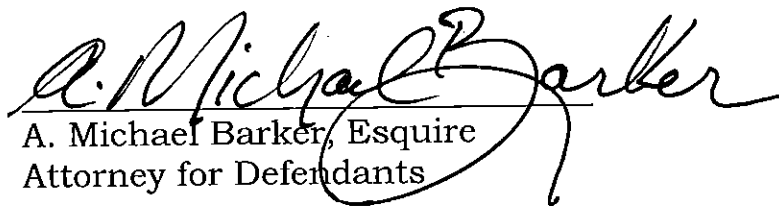
MICHAEL DIVITO, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS POLICE OFFICER FOR
THE DEPTFORD TOWNSHIP POLICE
DEPARTMENT;

JOHN STORMS, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS SERGEANT FOR THE
DEPTFORD TOWNSHIP POLICE DEPARTMENT;
AND,

JESSE YAMADA, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS SERGEANT FOR THE
GLOUCESTER COUNTY DEPARTMENT OF
CORRECTIONAL SERVICES,

Defendants.

Defendants, Deptford Township, Chief of Police Daniel Murphy,
Michael DiVito, and John Storms hereby voluntarily dismiss their
Counterclaim, asserted in their Answer to Plaintiff's Complaint, without
prejudice pursuant to Fed. R. Civ. Pro. 41.


A. Michael Barker, Esquire
Attorney for Defendants

Dated: 29 October 2013